

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

MICHAEL E. FULCHER	§	
VS.	§	CIVIL ACTION NO. 5:06-CV-102
WARDEN PAUL A. KASTNER	§	

MEMORANDUM ORDER OVERRULING RESPONDENT'S OBJECTIONS AND  
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Michael E. Fulcher, a federal prisoner, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court ordered that this matter be referred to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends granting the petition, expunging the disciplinary action from petitioner's record, and restoring the forfeited good time credits.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Respondent filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. Respondent cites several cases from courts outside this circuit for the proposition that contraband found in an area with limited access may be attributed to the inmates who have access to the area. Respondent offers no factual support for the conclusion that other

inmates did not have “equal access” to petitioner’s cubicle. Rather, the record before the court reflects that the 280 inmates assigned to the prison camp were allowed free access to the cubicles of other inmates. Citing *Broussard v. Johnson*, the magistrate judge correctly concluded that the evidence was insufficient to satisfy the low evidentiary burden of “some evidence.” *Broussard v. Johnson*, 253 F.3d 874, 877 (5th Cir. 2001)(holding that the evidence was insufficient where the contraband was found in a kitchen to which one hundred inmates had access).

**ORDER**

Accordingly, respondent’s objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge’s recommendation.

**SIGNED this 30th day of June, 2008.**

A handwritten signature in black ink, appearing to read "David Folsom", written over a horizontal line.

DAVID FOLSOM  
UNITED STATES DISTRICT JUDGE